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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MONYA BLANTON and DIANE JOA,  
12 Plaintiffs,  
13 v.  
14 TORREY PINES PROPERTY  
15 MANAGEMENT, INC., et al.,  
16 Defendants.  
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Case No.: 15-CV-0892 W (NLS)

**ORDER ON DISCOVERY DISPUTE  
NO. 2: DENYING PLAINTIFFS'  
MOTION TO COMPEL**

**[Dkt. No. 84]**

24 Before the Court is the parties' Joint Motion for Determination of Discovery  
25 Dispute No. 2. (Dkt. No. 84.) Having considered the arguments presented by both  
26 parties and for the reasons set forth herein, the Court **DENIES** Plaintiffs' motion to  
27 compel further responses to Interrogatory Nos. 22 and 23.

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1           **I. Relevant Factual and Procedural Background**

2           This case presents claims related to the Fair Housing Act (“FHA”) and alleged  
3 discrimination based on familial status. (*See* Dkt. No. 29.) At the outset of this case,  
4 Plaintiffs Blanton and Joa alleged identical claims against Defendants, including claims  
5 for discrimination in violation of the FHA and the California Fair Employment and  
6 Housing Act (“CFEHA”). (*See* Dkt. No. 29.)

7           This discovery dispute arose previously, and Defendants raised the question of  
8 Plaintiffs’ standing to pursue FHA and CFEHA based claims for discriminatory housing  
9 practices. (Dkt No. 65.) In response, this Court denied the pending motion to compel  
10 without prejudice, and set a deadline for briefing regarding Plaintiffs’ standing to  
11 continue to pursue their discrimination claims. (Dkt. No. 66.) Defendants moved to  
12 dismiss each of the Plaintiffs’ FHA and CFEHA claims. (Dkt. No. 72.) The Court  
13 dismissed Ms. Joa’s claims, but permitted Ms. Blanton’s claims to proceed. (Dkt. No.  
14 83.) This dispute now arises for the second time.

15           Plaintiffs Blanton and Joa *both* seek to compel further responses to interrogatories  
16 propounded solely by Ms. Joa. (Dkt. No 84, pg. 2:12-13; pg. 10:26-27; Dkt. 84-3, Ex. 1.)  
17 Specifically, Plaintiffs move to compel responses to Interrogatory Nos. 22 and 23, which  
18 seek information for each of TPPM’s rental units relating to, in sum, the size/layout and  
19 occupancy of each unit within 14 geographical zip code areas.<sup>1</sup> (Dkt. No. 84, at II.C.)  
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21           <sup>1</sup> Interrogatory No. 22 states:

22           For each rental dwelling owned or operated by any defendant and located in  
23 the following zip codes within San Diego County ... please state the following  
24 information for the period between June 1, 2011 and June 1, 2015: (1) each  
25 dwelling by unit number and building address; (2) the size of each dwelling  
26 unit by square footage; and (3) the configuration of each dwelling unit by  
27 number of bedrooms, bathrooms and total number of rooms. Plaintiffs request  
28 this information be supplied in MS Excel.

Interrogatory No. 23 states:

For each rental dwelling owned or operated and located in the following zip  
codes within San Diego County ... please state the following information for

1 Plaintiffs argue that responses to the interrogatories are relevant to Ms. Blanton's  
2 remaining discrimination claims, and are necessary for expert statistical analysis of  
3 disparate impact. (*Id.* at II.D.) Defendant Torrey Pines Property Management ("TPPM")  
4 objects to Ms. Blanton's continued pursuit of responses to interrogatories based upon  
5 lack of standing to compel responses as Ms. Blanton was not the propounding party.  
6 TPPM also objects that the discovery is irrelevant, over-broad, oppressive and unduly  
7 burdensome, and invades the Defendant's privacy and requests commercially protected  
8 information.<sup>2</sup> (*Id.* at II.F-G.)

## 9 II. Discussion

### 10 A. Plaintiff Blanton Lacks Standing to Compel a Response

11 Motions to compel responses to interrogatories are governed by Rule 37 of the  
12 Federal Rules of Civil Procedure. As a threshold matter, the party pursuing a motion to  
13 compel must have standing to bring the motion. *Payne v. Exxon Corp.*, 121 F. 3d 503,  
14 510 (9th Cir. 1997) ("Only 'the discovering party' ... may bring a motion to compel.");  
15 *Loop AI Labs v. Gatti*, No. 15-cv-00798-HSG (DMR), 2016 WL 4474584, 2016 U.S.  
16 Dist. LEXIS 114247, at \*8 (N.D. Cal. Aug. 25, 2016) ("under Rule 37(a) ... a party lacks  
17 standing to move to compel answers to a different party's discovery requests").

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20 the period between June 1, 2011 and June 1, 2015: (1) each tenant household,  
21 identified by unique tenant number; (2) the dates of first and last occupancy  
22 by each tenant household; (3) the number of occupants in each household,  
23 based on the household's first month of occupancy; (4) the number of minor  
24 children in each tenant household based on the household's first month of  
25 occupancy; (5) the rent charged each tenant household for the household's  
26 third month of occupancy. [Fn. 3.] Plaintiffs request that this information be  
27 supplied in MS Excel.

28 Fn. 3: Plaintiffs request the monthly rent charged for the third month of  
tenancy to avoid the effects of move-in specials or first month rent discounts.  
If defendants certify that no such rent adjustments exist, then the first month  
rent is acceptable.

<sup>2</sup> The Court notes TPPM's request to submit additional briefing, but finds further briefing unnecessary under the facts and circumstances presented.

1 The parties do not dispute that Interrogatory Nos. 22 and 23 were propounded by  
2 Ms. Joa only. (*See* Dkt. 84-3, Ex. 1.) Ms. Blanton is not the propounding party, and  
3 lacks standing to compel responses under Rule 37. *Payne v. Exxon Corp.*, 121 F. 3d 503,  
4 510 (9th Cir. 1997); *Loop AI Labs v. Gatti*, No. 15-cv-00798-HSG (DMR), 2016 WL  
5 4474584, 2016 U.S. Dist. LEXIS 114247, at \*8 (N.D. Cal. Aug. 25, 2016). *See also, In*  
6 *re Urethane Antitrust Litig.*, 237 F.R.D. 454 (D. Kan. 2006) (non-settling defendants lack  
7 standing to seek enforcement of settled defendant's discovery requests).

8 Plaintiffs argue that in any event Ms. Joa should get the discovery because she and  
9 Ms. Blanton overlapped in time at the subject apartments and were subject to the same  
10 occupancy policy. (*See* Dkt. 29, ¶¶ 14-17, 19-21.) The Court does not find this timing  
11 overlap to be enough of a tie between the Plaintiffs so as to allow the requested  
12 discovery. Even though Ms. Joa and Ms. Blanton are co-plaintiffs, their alleged claims  
13 arise out of different sets of facts. (*Id.*) While Ms. Joa and Ms. Blanton were arguably  
14 tied together by the same question of law regarding whether they each suffered familial  
15 status discrimination due to the occupancy policy, that tie was severed when the district  
16 judge found that Ms. Joa did not suffer any concrete injury for any alleged violation of  
17 the FHA or CFEHA. (Dkt. No. 83.) Further, at the time of the filing of the complaint  
18 and propounding of the discovery, Plaintiffs were aware of the fact that Ms. Joa did not  
19 suffer any concrete injury for any alleged violation of the FHA or FEHA because TPPM  
20 did not begin to enforce its occupancy policy against Ms. Joa until 2014, when all of her  
21 children had already reached the age of majority. (*See* Dkt. No. 29, ¶ 20.) While aware  
22 of these distinct factual scenarios, Plaintiffs decided to serve the interrogatories that  
23 related to the discrimination claims and issue of disparate impact only in Ms. Joa's name.  
24 Plaintiffs' should have been aware that Ms. Joa did not have standing to assert such  
25 claims. In sum, not only is there no standing, but there is no common set of facts or  
26 common question of federal law that binds these Plaintiffs together as to these  
27 interrogatories.  
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1           Additionally, Plaintiffs cite to no authority permitting a party to compel responses  
2 to discovery propounded in another party's name. This Court found only one case that  
3 permitted a motion to compel to proceed when the interrogatories were propounded in  
4 another party's name. In *Morden v. T-Mobile USA, Inc.* ("Morden"), No. C05-  
5 2112RSM, 2006 WL 1727987, 2006 U.S. Dist. LEXIS 42047, at \*4 (W.D. Wash. June  
6 22, 2006), plaintiff Morden propounded discovery requests for the purposes of class  
7 certification relating to "off the clock" claims in a Fair Labor Standards Act case. *Id.* at  
8 \*1-2. The discovery was propounded prior to the time that Plaintiff Siddiqui, who  
9 asserted the "off the clock" violations, joined the action. *Id.* at \*3-4. There, the  
10 Washington District Court held that in the absence of any authority from the parties  
11 regarding standing, and in light of the ability of Plaintiff Siddiqui to propound identical  
12 discovery, the Court's time and resources were best served by addressing the merits of  
13 the motion. *Id.* at \*4.

14           The facts of the case before the Court are distinguishable from *Morden*, and  
15 compel a different result. Here, Defendant TPPM cited to relevant authority that  
16 precludes the unnamed party from pursuing a motion to compel. (Dkt. 84, pgs. 11:13-  
17 12:6, citing *Payne v. Exxon Corp.*, 121 F. 3d 503, 510 (9th Cir. 1997) and *In re Urethane*  
18 *Antitrust Litig.*, 237 F.R.D. 454 (D. Kan. 2006).) Fact discovery closed November 30,  
19 2016; precluding Plaintiff Blanton from issuing identical discovery and eliminating any  
20 saved resources for the Court or parties. (*See* Dkt. 51, Scheduling Order.) Plaintiffs also  
21 assert that they have not exceeded the permitted 25 written interrogatories because each  
22 Plaintiff may propound 25 separate written interrogatories. (Dkt. 84, pg. 10:20-24.)  
23 Plaintiffs thereby confirm that each set of interrogatories propounded was intended to be  
24 for the propounding Plaintiff only. Any other construction would impermissibly permit  
25 50 interrogatories per plaintiff in violation of Rule 33.

26           Plaintiffs' motion to compel can only proceed as asserted by Ms. Joa. Accordingly,  
27 this Court turns to analysis under the standards of Rule 26 as applied to Ms. Joa.

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1                   **B. The Interrogatories are Irrelevant to Ms. Joa's Claims**

2           With proper standing, a party can obtain and compel discovery of non-privileged  
3 information so long as it is relevant and proportional. Fed. R. Civ. P. 26(b)(1). If the  
4 discovery requested is not proportional, it falls outside the bounds of Rule 26. *See In re*  
5 *Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 564-65 (D. Ariz. 2016)  
6 (“Relevancy alone is no longer sufficient — discovery must also be proportional to the  
7 needs of the case.”).

8           Once the propounding party establishes that the request seeks relevant information,  
9 “[t]he party who resists discovery has the burden to show discovery should not be  
10 allowed, and has the burden of clarifying, explaining, and supporting its objections.”  
11 *Superior Commc'ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217 (C.D. Cal. 2009); *see*  
12 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.1975) (requiring defendants “to  
13 carry heavy burden of showing why discovery was denied”).

14           Plaintiffs concede that the information requested via Interrogatory Nos. 22 and 23  
15 is relevant only to prove a “pattern or practice of discrimination” for the purposes of the  
16 disparate impact claim. (Dkt. No. 84, pg. 8:10-15.) Ms. Joa no longer asserts any valid  
17 claim for discrimination, rendering the discovery sought irrelevant to her remaining  
18 causes of action.

19           This Court is unable to find relevant authority whereby a named Plaintiff was  
20 permitted to pursue discovery relevant only to another party's claim without any  
21 relevance to their own remaining case. In addition, the Notes to the 2000 and 2015  
22 Amendments explain that Rule 26 was intended to address the distinction between  
23 discovery “relevant to the subject matter involved in the action” and discovery “relevant  
24 to a claim or defense.” Fed. R. Civ. P. 26, Notes of Advisory Committee on 2015  
25 Amendments. *See also, In re Ashworth, Inc. Sec. Litig.*, No. 99cv0121 L (JAH), 2002  
26 WL 33009225, 2002 U.S. Dist. LEXIS 27991, at \*9 (S.D. Cal. May 10, 2002) (noting  
27 parties have no entitlement to discovery to develop new claims or defenses that are not  
28 identified in the pleadings). Interrogatories 22 and 23 are irrelevant to Ms. Joa's claims or

1 defenses, even if perhaps relevant to the subject matter of the litigation. Plaintiffs'  
2 motion to compel is denied.

### 3 **C. The Interrogatories are Impermissibly Disproportionate**

4 Even were Ms. Joa able to articulate relevance to her own claim, or proceed to  
5 collect discovery relevant only to Ms. Blanton's claims, the requests are also  
6 disproportionate and beyond the bounds of Rule 26.

7 Both Plaintiffs' complaint and argument rely heavily on the disparate impact on  
8 renter families in the City of El Cajon. (*See* Dkt. Nos. 29; 84, pg. 3:10-4:2.) The scope  
9 of information sought in Ms. Joa's discovery requests is not limited to the City of El  
10 Cajon, but seeks information from across San Diego County. Plaintiffs argue that  
11 Plaintiffs' expert needs broad information to create an appropriate data pool, and submit a  
12 declaration from their expert in support. (Dkt. 84, pg. 8:27-9:5.)

13 Plaintiffs' expert's declaration simply states that information from the Dominguez  
14 Way apartments would not be sufficient and that he would have to combine information  
15 across zip codes. (Dkt. No. 84-2, ¶ 2.) Ms. Joa's interrogatories seeks information for 14  
16 separate zip codes. (Dkt. No. 84, at II.C; Dkt No. 84-3, Ex. 1.) The City of El Cajon  
17 appears to contain at least three distinct zip codes: 92019, 92120, and 92121. (*See* City  
18 of El Cajon Zip Code Map, available at [http://www.ci.el-cajon.ca.us/discover-el-](http://www.ci.el-cajon.ca.us/discover-el-cajon/about/map)  
19 [cajon/about/map](http://www.ci.el-cajon.ca.us/discover-el-cajon/about/map).) Plaintiffs' expert fails to offer any reasoning as to why information  
20 beyond the combined zip codes of the City of El Cajon is necessary. While statistical  
21 information is relevant to disparate impact cases, Plaintiffs' pleading is specific to the  
22 City of El Cajon, and so too must be the scope of discovery. *See Mountain Side Mobile*  
23 *Estates P'ship v. Sec. of Housing and Urban Dev.*, 56 F.3d 1243, 1253 (10th Cir. 1995)  
24 ("In this case, the appropriate comparables must focus on the local housing market and  
25 local family statistics. The farther removed from the local statistics the plaintiffs venture,  
26 the weaker their evidence becomes.") cited with approval in *Budnick v. Town of*  
27 *Carefree*, 518 F.3d 1109, 1119 (9th Cir. 2008); *see also*, Fed. R. Civ. P. 26.

1 Defendant also argues that the Interrogatories are overbroad and overly  
2 burdensome because, *inter alia*, the data sought would require excessive amounts of time  
3 to collect, and ultimately will not yield accurate information because it is based on the  
4 information as contained in the residents' applications, which may or may not be  
5 accurate. (Dkt. 84, pg. 17:23-18:6.) As evidence of the unreliability of the information  
6 sought, Defendant points to Plaintiff Blanton's own application. (*Id.*) Ms. Blanton's  
7 application lists only herself and three children, omitting two additional children and  
8 members of the household. (*Id.*)

9 The Court finds this argument persuasive, and finds the requests impose an undue  
10 burden disproportionate to the needs of the case. While some of the information sought  
11 is likely part of TPPM's business records (such as the address, number of bedrooms and  
12 bathrooms per unit, and the price of rent), some information sought appears to require  
13 tenant files to be pulled at great burden and expense to TPPM. (*See*, Dkt. 84-4, ¶ 3  
14 estimating 496 hours to pull and review each file for the geographical areas identified.)  
15 Interrogatory 23, in particular, asks for information including the number of occupants  
16 per unit, how many of them are children, and the first and last dates of occupancy. TPPM  
17 states that to gather this information, individual tenant files will have to be pulled and  
18 reviewed, to gather information that is unreliable at best. (*See*, Dkt. 84-4.) Even  
19 assuming that such information is needed for Plaintiffs' expert's analysis, accurate  
20 information is required to produce reliable expert testimony and results. As Ms.  
21 Blanton's application demonstrates, accurate information is not likely to be gathered.  
22 The burden and expense of compiling this information coupled with the unreliability of  
23 the same makes the request disproportionate to the needs of the case.

24 Defendant raises additional objections based upon privacy and commercially  
25 sensitive information. However, because the Court finds that neither Plaintiff may  
26 pursue the discovery based upon standing, relevance, and proportionality, the Court need  
27 not address any further objections.

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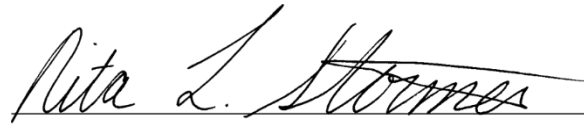


1           **III. Conclusion**

2           For the foregoing reasons, Plaintiffs' motion to compel responses to Interrogatory  
3 Nos. 22 and 23 are **DENIED**.

4           **IT IS SO ORDERED.**

5 Dated: May 10, 2017

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7 Hon. Nita L. Stormes  
8 United States Magistrate Judge  
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